

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL GRESHAM #272603,

Plaintiff,

v.

ADEYINKA AWOMOLO, et al.,

Defendants.

CASE No. 1:24-cv-242

HON. ROBERT J. JONKER

**ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION**

The Court has reviewed the Magistrate Judge's Report and Recommendation (ECF No. 35) filed on December 20, 2024. Plaintiff filed his Objections to the Report and Recommendation (ECF No. 37) on January 6, 2025.

Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, "[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified." 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED. R. CIV. P. 72(b)(3); *see also* 28 U.S.C. § 636(b)(1)(C). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981).

The Magistrate Judge recommends that the Court grant Defendants' Motion for Summary Judgment (ECF No. 16) and dismiss without prejudice all claims and defendants, except for Plaintiff's January 9, 2024 claim against Defendants Awomolo and Shembarger, based on a failure to exhaust. Plaintiff objects to the Report and Recommendation. (ECF No. 37). After de novo review, the Court overrules Plaintiff's objections and adopts the Magistrate Judge's Report and Recommendation. The Magistrate Judge carefully and thoroughly considered the evidentiary record, the parties' arguments, and the governing law.

Defendants argue in their Motion that Plaintiff failed to exhaust his administrative remedies for all claims and defendants except the January 9, 2024 claims against Awomolo and Shembarger. (ECF No. 16). Plaintiff does not disagree with the basic conclusion but objects through generalized statements—largely untethered to any dates or timeframe—that he attempted to exhaust his administrative remedies, but that those attempts were thwarted by prison staff. (*See* ECF No. 21, PageID.173–75). Plaintiff's claims are without evidence and belied by the record evidence. For example, Plaintiff's Grievance Summary Report confirms that Plaintiff filed 51 grievances from January 2, 2024 to November 18, 2024. (ECF No. 31-1, PageID.258–59). And he did, in fact, successfully grieve against Defendants Awomolo and Shembarger on January 11, 2024. (ECF No. 17-3, PageID.156). So there can be no dispute of material fact on this point; Plaintiff failed to exhaust his administrative remedies for all but one claim, and his alleged attempts to do so are unsubstantiated. *See Sango v. Fleury*, 2:20-cv-186, 2021 WL 2942556, at *4 (W.D. Mich. May 6, 2021), *report and recommendation adopted sub nom. Sango v. Eubanks*, 2:20-CV-160, 2021 WL 2217372 (W.D. Mich. June 2, 2021), *aff'd sub nom. Sango v. Fleury*, No. 21-2597, 2022 WL 2163519 (6th Cir. May 4, 2022). Summary judgment in favor of Defendants Burgess, Porter, Hall, Lyon, Rademaker, Awomolo, and Shembarger—with the exception of the January 9,

2024 Awomolo and Shembarger claim—is appropriate, for the very reasons the Report and Recommendation details.

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (ECF No. 35) is **APPROVED** and **ADOPTED** as the opinion of the Court.

IT IS FURTHER ORDERED that Defendants’ Motion for Summary Judgment (ECF No. 16) is **GRANTED** and all claims and defendants are **dismissed without prejudice** except for Plaintiff’s claims against Defendants Awomolo and Shembarger based on events that occurred on January 9, 2024.

Dated: January 16, 2025

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE